Contingency Real Estate Support

Environmental

Prototype June 2001

Objective

Provide overview of environmental responsibilities under emergency conditions

Definitions

Environmental Compliance: aspects affecting current operations, such as water discharge, sewage treatment, noise abatement, air quality, or hazardous waste/materials management.

Environmental Restoration: aspects relating to remediation of pollution caused by past waste disposal practices.

Remediation - act of providing a remedy, something that corrects or counteracts; legal means to recover a right or to prevent or obtain redress for a wrong.

Restoration - bringing back to a former condition;

National Environmental Policy Act (NEPA)

PL 91-190, National Environmental Policy Act of 1969, as amended

- First significant environmental *protection* statue rather than event or disaster response statute
- Requires we consider the impact of our action *prior* to deciding whether to go ahead with them
- Section 1506.11 - where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of [NEPA], the … agency taking the action should consult with the Council [on Environmental Quality] about alternatives.

Regulations

- **44 CFR Part 10,** FEMA; Environmental Considerations
- **40 CFR Part 1500-1508,** Council on Environmental Quality
- **AR 200-1,** Environmental Protection and Enhancement.
  - Comply with all regulations, laws and requirements
  - Ensure environmental criteria are incorporated in all projects not designed by USACE

Regulations (cont'd)

- **AR 200-2** Environmental Effects of Army Actions.
  - Sets for policy for integrating environmental considerations in to planning and decision making
  - Establishes criteria for determining categorical exclusions (CX) from requirement for preparing EIS
  - CX = minimal effect, no change to existing conditions, similarity to actions previously found to be CX

Regulations (cont'd)

ER 200-2-2 Environmental Quality, Procedures for Implementing NEPA, (33 CFR 230)

Para 8. Emergency Actions. In responding to emergency situations to prevent or reduce risk of life, health, property, or severe economic losses, district commanders may proceed …and … shall consider the probable environmental consequences in determining appropriate emergency actions and when requesting approval to proceed on emergency actions, will describe proposed NEPA documentation or reasons for exclusion from documentation….

- NEPA documentation may be done prior to (planning stage) or after, as appropriate
- When possible, major actions with potentially significant environmental impacts shall be referred through Division to CECW-RE for consultation with CEQ about NEPA arrangements

Regulations (cont'd)

- **Real Estate Policy Guidance Letter No. 21**-- Chapter 15-6, Revised AR 200-1 -- Real Property Acquisition, Outgrant and Disposal Transactions for Non-BRAC Military and Civil Works Real Property
  - It is Army policy to prepare an EBS to determine the environmental conditions of properties being considered for acquisition, outgrants, and disposals….or where extraordinary circumstances exist.
  - … used to identify the potential environmental contamination liabilities associated with the real property transactions and to support a FOST, FOSL or Environmental Condition Of Property (ECOP)

Sample Exclusionary Paragraphs

The proposed recovery action is considered an emergency action as discussed in paragraph 8, ER 200-2-2, Procedures for Implementing NEPA. Due to the need for very rapid implementation of the proposed recovery action to alleviate a potentially severe flood threat and no significant environmental effects, it is has been determined that NEPA documentation is not necessary for this action. In addition, the proposed action will have no effect to any listed species under the Endangered Species Act. Compliance with Section 106 of the National Historic Preservation Act would be accomplished prior to construction but because of the disturbed nature of the surrounding area, no cultural or historic remains are anticipated to be affected.

The proposed recovery action would not require authorization under Section 404 or Section 401 of the Clean Water Act because it is considered an "...emergency

FEMA and the Environment

Any action that FEMA directly carries out or provides any funding or assistance toward must be reviewed… for compliance with applicable environmental laws and Executive Orders.

… use all practical means to integrate environmental concerns into disaster mitigation, planning, response, and recovery decision-making.

From Integrating Environmental Considerations into Disaster Mitigation, Planning and Recovery, A Pocket Guide to Environmental Compliance *http://www.fema.gov/mit/ep/kit.htm*

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What

- Pre-use Inspections:
  - Preliminary Assessment Screening (PAS)
  - Environmental Baseline Survey (EBS)
  - Joint Survey and Inspection (JS&I)
  - Photos, drawings, narrative, checklists, videos

While Realty Specialists are not usually professionally trained as environmental professionals, they can look for and note unusual conditions, oily spots, sheen on water, dead vegetation, sink holes, smells, pipes, tanks, etc.

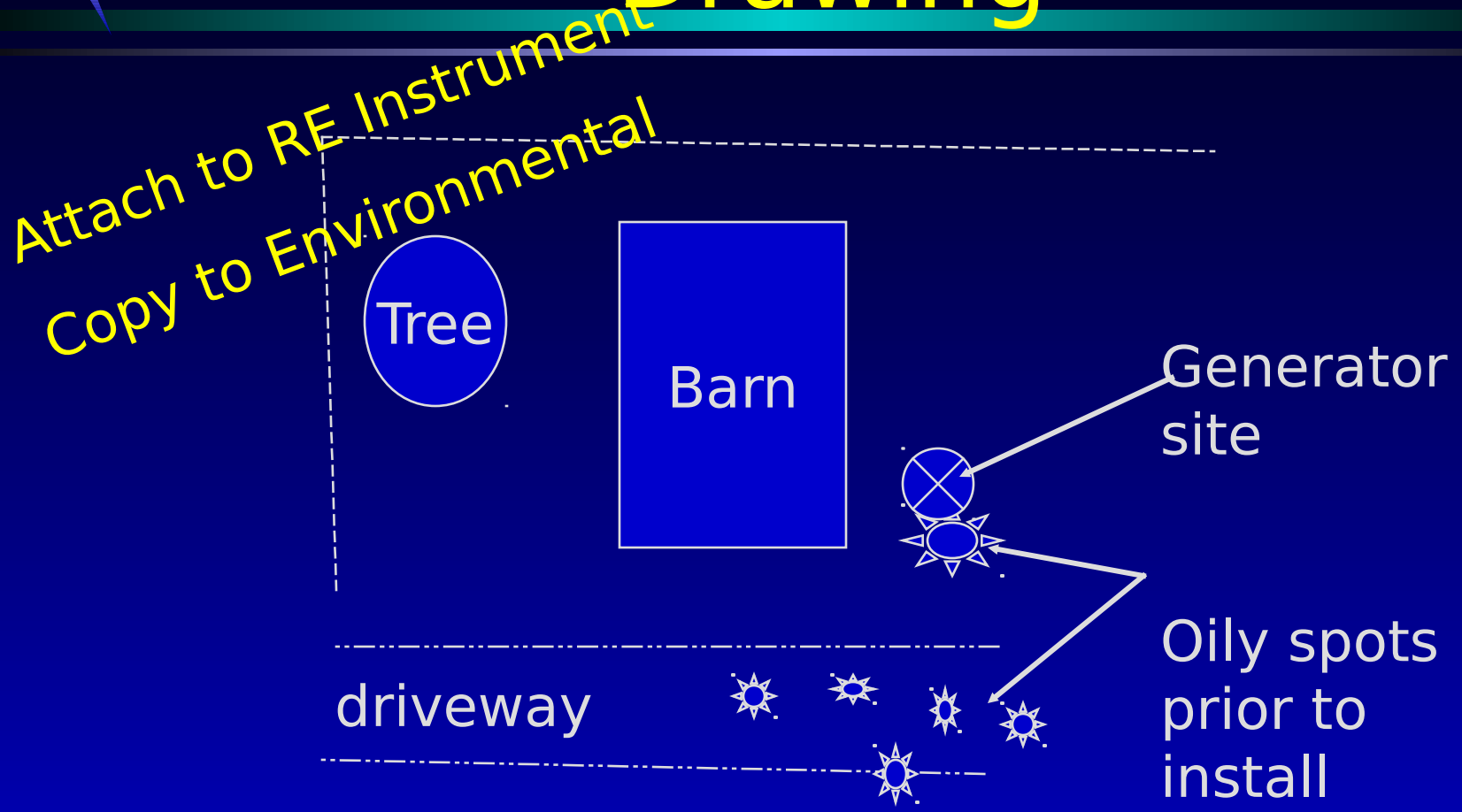
Why

- Often first on-site, fast paced missions, teamwork
- Perform triage for environmental personnel
- Record of beginning state
  - Government protection
  - Property owner protection
- Environmental laws do not allow for the transfer of liability - “hold harmless clause” (generally speaking)

How

- Coordinate with ERRO Environmental cell and MMs
- Review SOWs for real property and environmental requirements and issues
- Document condition at time of assumption of use with photos, videos, drawings, narrative reports, etc.
- Document what we are going to do (under normal conditions, this is usually where there is an EA/EIS); SOWs, mission statements, granting clauses in leases, etc.
- Document the condition after our use with photos, videos, drawings, narrative reports, testing, etc.

Site Inspection Drawing



Date of survey: 28 Aug

Date of install: 29 Aug

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